

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JAMES HANTON

v.

M. PRICE, et al.

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PRISONER
Case No. 3:04CV473 (CFD)(TPS)

RULING ON MOTION FOR INJUNCTION

Plaintiff, James Hanton (“Hanton”), filed this action against various employees of the Connecticut Department of Correction (“DOC”), Centric Group L.L.C. (“Centric”) and Access Catalog Company (“Access”). He seeks an injunction prohibiting defendants LoCasto and Lantz from imposing the a "mark-up" on items sold in the prison commissary. LoCasto is alleged to be the Commissary Supervisor for the Department of Correction, while Lantz is the Correction Commissioner. For the reasons that follow, the motion is denied.

“[I]nterim injunctive relief is an ‘extraordinary and drastic remedy which should not be routinely granted.’” Buffalo Forge Co. v. Ampco-Pittsburgh Corp., 638 F.2d 568, 569 (2d Cir. 1981) (quoting Medical Society of New York v. Toia, 560 F.2d 535, 538 (2d Cir. 1977)). In addition, a federal court should grant injunctive relief against a state or municipal official “only in situations of most compelling necessity.” Vorbeck v. McNeal, 407 F. Supp. 733, 739 (E.D. Mo.), aff’d, 426 U.S. 943 (1976).

In this circuit the standard for injunctive relief is well established. To warrant preliminary injunctive relief, the moving party “must demonstrate (1) that it will be irreparably

harmful in the absence of an injunction, and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make them a fair ground for litigation, and a balance of hardships tipping decidedly in its favor.” Brewer v. West Irondequoit Central Sch. Dist., 212 F.3d 738, 743-44 (2d Cir. 2000).

Although a hearing is generally required on a properly supported motion for preliminary injunction, oral argument and testimony are not required in all cases. See Drywall Tapers & Pointers Local 1974 v. Local 530, 954 F.2d 69, 76-77 (2d Cir. 1992). Where, as here, “the record before a district court permits it to conclude that there is no factual dispute which must be resolved by an evidentiary hearing, a preliminary injunction may be granted or denied without hearing oral testimony.” 7 James W. Moore, et al., Moore’s Federal Practice ¶ 65.04[3] (2d ed. 1995). Upon review of the record, the court determines that oral testimony and argument are not necessary in this case.

In one of the claims included in this action, Hanton challenges DOC Administrative Directive 3.8, at section 17, which provides that all merchandise sold in the prison commissary will be marked up 30%, as an “illegal tax”. In this motion, Hanton asks the court to order defendants LoCasto and Lantz to stop enforcing the directive.

Hanton has not identified any irreparable harm that he would suffer if the court denied his request to prevent the mark-up. If he prevails in this action, he may recover any amounts that he was overcharged as damages. Thus, Hanton fails to satisfy the first requirement for preliminary injunctive relief.

Hanton's Motion for Injunction [**doc. #10**] is **DENIED**.

SO ORDERED this 11th day of February, 2005, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE